

CALIFORNIA LITIGATION:

Editor's Foreword, Volume 12, Number 1, 1998

Recurring Issues

By Russell Leibson

A legendary baseball manager Casey Stengel once said, it feels like *deja vu* all over again. That is how many practitioners and judges must feel upon encountering the same difficult issues over and over again. This issue looks at such "Recurring Issues," including articles on how to select an appellate lawyer, sexual harassment, legal malpractice claims, what to do when a litigant dies, and a host of other issues.

David C. Owen catalogs the various statutes governing sanctions. The California Legislature recently extended Code of Civil Procedure section 128.7's sunset provision until January 1, 2003, so the debate over the statute's effectiveness is likely to continue.

Joan Wolff looks at the trial lawyer's best friend — the appellate specialist — and opines that one of the smartest tactical moves for trial lawyers is to seek appellate advice early and often as a means of protecting verdicts.

Richard E. Flamm examines ethical rules prohibiting conflicts of interest and the dilemmas they create for lawyers. He observes that when it comes to the timeworn admonition against representing concurrent adverse interests, we are indeed not in Kansas anymore.

Leah E. DeLancey looks at "short fuse" limitations periods and other potential pitfalls in cases where a defendant dies during litigation. She offers practical tips on avoiding malpractice liability and discusses techniques to insure that judgments are collectible in such situations.

W. Reece Bader says *arrivederci* to *pro hac vice* in light of recent cases interpreting the unauthorized practice of law, a subject of increasing importance to law firms expanding their practices nationwide and to in-house corporate counsel. He cautions that non-California lawyers need to think twice before doing anything in California, except vacationing.

Robert S. Gerber discusses the increasing and, to many, disturbing trend in uncovered claims against lawyers and suggests ways to protect against them. He recommends that every lawyer carefully study his or her malpractice policy, conduct annual risk assessments, explore new insurance products available on the market, retain *Cumis* counsel to defend such claims, and implement procedures to identify and avoid conflicts of interest.

Sue Ann Evans addresses employer liability for workplace harassment. She recommends that employers have a policy against harassment in place, that they implement the policy, and that they respond to complaints swiftly and effectively.

Rick Deetman's article examines the expansion of the design immunity defense in highway accident cases. He urges that roadway design is too important to public safety to exempt substandard highway designs from liability.

Timothy C. Stutler presents a practical formula for calculating proportionate fault in cases governed by Proposition 51. He suggests eight general principles to assist in evaluating a joint tortfeasor's liability exposure for use in settlement negotiations and at trial.

The Hon. George J. Abdallah's Judicial Opinion addresses the dilemma courts face when confronted by

perjured testimony in domestic violence cases. He counsels trial judges to exercise restraint in using their contempt powers in view of the unique pressures placed on victims testifying in such cases.

— Looking Ahead —

Our next issue looks at "Tactics and Ethics," a subject that has engendered considerable debate among practitioners and judges and spawned a number of recent proposals to promote civility in our profession. Among the topics covered will be articles on enforcing settlements, litigation privilege, witness preparation, and "ten ways to lose your appeal at trial."

Russell Leibson, Editor-in-Chief of California Litigation, practices at his own firm in San Francisco.

California Litigation is pleased to review original articles submitted for publication.
(Articles should be 8-10 double-spaced pages, or about 2,000 words.)

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